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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Rosette LLP,

10 Petitioner,

11 v.

12 Lula Williams, *et al.*,

13 Respondents.

No. MC-18-00066-PHX-JJT

**ORDER**

14 At issue is Respondents' "Opposition to Motion to Quash Subpoena Underlying  
15 Actions [*sic*]: Williams v. Big Picture Loans, LLC, 3:17cv461 (E.D. Va.); and Galloway  
16 v. Big Picture Loans, LLC, 3:18cv406 (E.D. Va.) and Request for Award of Attorneys Fees  
17 & Costs as Sanctions" (Doc. 8), which is in fact a motion to dismiss this miscellaneous  
18 action for lack of jurisdiction or, in the alternative, transfer this action to the Eastern District  
19 of Virginia. In response, Petitioner filed a "Reply in Support of Rosette's Motion to Quash"  
20 (Doc. 10). In this Order, the Court will also resolve Petitioner's Motion for Order *Nunc*  
21 *Pro Tunc* to Correct Filing Date (Doc. 7), which is unopposed by Respondents.

22 Petitioner initiated this miscellaneous action by filing a Motion to Quash a  
23 Subpoena, which is related to two actions pending in the United States District Court,  
24 Eastern District of Virginia: 3:17-cv-00461-REP and 3:18-cv-00406-REP. (Doc. 2.)  
25 Among other things, Respondents ask the Court to either dismiss this action for lack of  
26 jurisdiction or transfer the action to the Court in which the underlying actions are pending.

27 The parties disagree about whether the District of Arizona is the "court for the  
28 district where compliance is required" of the subpoena served on Petitioner, such that this

1 quash action is properly filed here under Federal Rules of Civil Procedure 45(d) and (e).  
2 But even if it is, Federal Rule of Civil Procedure 45(f) provides that the Court may transfer  
3 Petitioner’s Motion to Quash to the Eastern District of Virginia, the Court that issued the  
4 subpoena, “if the person subject to the subpoena consents or if the [Court] finds exceptional  
5 circumstances.” The Advisory Committee’s note to Rule 45 states that exceptional  
6 circumstances include instances in which a transfer is “warranted in order to avoid  
7 disrupting the issuing court’s management of the underlying litigation, as when that court  
8 has already ruled on issues presented by the motion.” Thus, a risk of inconsistent rulings  
9 that could disrupt the management of the underlying litigation can be considered an  
10 exceptional circumstance. *See Cont’l Auto. Sys., U.S., Inc. v. Omron Auto Elecs., Inc.*, 14  
11 C 3731m, 2014 WL 2808984, at \*2 (N.D. Ill. June 20, 2014); *see also Moon Mountain*  
12 *Farms, LLC v. Rural Cmty. Ins. Co.*, 301 F.R.D. 426, 429-30 (N.D. Cal. 2014) (collecting  
13 cases and noting that attempting to circumvent the authority of the presiding judge in the  
14 underlying action is an exceptional circumstance contemplated by Rule 45).

15 One of the principal issues in the Motion to Quash is whether the defendants in the  
16 underlying actions are “arms” of a sovereign Tribe and whether Petitioner—the Tribe’s  
17 counsel—can avoid responding to the subpoena through an extension of the Tribe’s  
18 sovereign immunity. (Doc. 2, Mot. to Quash at 9-12.) Respondents point out that the Judge  
19 presiding over the underlying actions has already ruled that the defendants do not qualify  
20 as arms of the Tribe and cannot rely on the doctrine of sovereign immunity.

21 While the question of the scope of the Tribe’s sovereign immunity from  
22 subpoenas—and its law firm’s immunity by extension—may be distinct from the question  
23 of the defendants’ sovereign immunity, the two are related in the underlying actions.  
24 Because this Court may not be able to resolve the issue of Petitioner’s sovereign immunity  
25 from the subpoena without resolving questions at issue in the Eastern District of Virginia,  
26 the risk of inconsistent rulings is real. As a result, the Court finds that this is one of the  
27 exceptional circumstances contemplated by Rule 45(f) warranting transfer to the Eastern  
28 District of Virginia, the court that is presiding over the underlying actions and issued the

1 subpoena. *See Moon Mountain Farms*, 301 F.R.D. at 429-30; *Cont'l Auto. Sys.*, 2014 WL  
2 2808984, at \*2.

3 The Court could stay these proceedings and wait for the Eastern District of  
4 Virginia's final rulings—as well as any rulings on appeal—on the relevant issues. But the  
5 Court finds that any prejudice to Petitioner in having to appear in the Eastern District of  
6 Virginia in support of its Motion to Quash is minimal, because Petitioner has a law office  
7 in that District and, in any event, Respondents already filed a Motion to Compel the same  
8 subpoena in that District. The issues in the Motion to Quash are so wrapped up in the issues  
9 before the court in the Eastern District of Virginia that they are best resolved by that court.

10 The Court finds that an award of attorneys' fees and costs is not warranted and will  
11 therefore deny Respondents' request for that award.

12 Finally, Petitioner has demonstrated good cause for an Order *nunc pro tunc* to  
13 correct the filing date in this matter, and that request is unopposed by Respondents, so the  
14 Court will grant Petitioner's Motion (Doc. 7).

15 IT IS THEREFORE ORDERED granting Petitioner's Motion for Order *Nunc Pro*  
16 *Tunc* to Correct Filing Date (Doc. 7). Petitioner's Motion to Quash (Doc. 2) is deemed filed  
17 with this Court at 1:23 p.m. on December 12, 2018.

18 IT IS FURTHER ORDERED granting in part Respondents' "Opposition to Motion  
19 to Quash Subpoena Underlying Actions [*sic*]: Williams v. Big Picture Loans, LLC,  
20 3:17cv461 (E.D. Va.); and Galloway v. Big Picture Loans, LLC, 3:18cv406 (E.D. Va.) and  
21 Request for Award of Attorneys Fees & Costs as Sanctions" (Doc. 8). Respondents' request  
22 to transfer this matter to the Eastern District of Virginia is granted, and Respondents'  
23 request for an award of sanctions is denied.

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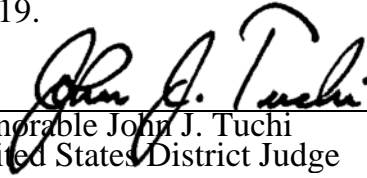
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1 IT IS FURTHER ORDERED that the Clerk of Court shall take all necessary steps  
2 to ensure the prompt transfer of this action to the United States District Court for the  
3 Eastern District of Virginia.

4 Dated this 11th day of January, 2019.

5   
6 Honorable John J. Tuchi  
7 United States District Judge  
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